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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 MORRIS LEON BRAGG,

10 Petitioner,

No. CIV S-05-0787 GEB KJM P

11 vs.

12 THOMAS L. CAREY, et al.,

13 Respondents.

FINDINGS AND RECOMMENDATIONS

14 _____/
15 Petitioner, Morris Leon Bragg, is currently in custody at the California State
16 Prison Solano in Vacaville, California. He is proceeding pro se with an application for writ of
17 habeas corpus under 28 U.S.C. § 2254. Petitioner is serving an indeterminate prison sentence of
18 20-years-to-life.

19 Petitioner appears to argue that he remains in prison because he has been
20 inappropriately classified as a “life prisoner.” Pet. at 4. Respondents assert in a motion to
21 dismiss filed January 19, 2007 that petitioner fails to state a claim upon which relief can be
22 granted.

23 Under 28 U.S.C. § 2254, the court may grant an application for writ of habeas
24 corpus only if a habeas petitioner shows that he is in custody in violation of federal law. As a
25 prisoner serving an indeterminate sentence under California law, petitioner may be released to
26 parole by the Board of Prison Terms as soon as petitioner becomes eligible for parole. Cal. Penal

Code § 3040. Petitioner fails to present anything suggesting, nor does petitioner even allege, that he has not been granted or considered for parole in violation of California law. For this reason petitioner fails to state a claim upon which relief can be granted under 28 U.S.C. § 2254.

Respondents also assert this action is time-barred. For the reasons stated above, the court need not address this argument.

In accordance with the above, IT IS HEREBY RECOMMENDED that:

1. Respondent's January 19, 2007 motion to dismiss be granted, and
2. This action be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: April 30, 2007.


U.S. MAGISTRATE JUDGE

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